

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SANDRA L. REYNOLDS,

Plaintiff,

v.

JO ANNE B. BARNHART, Commissioner of  
Social Security Administration,

Defendant.

CASE NO. C04-5703JKA

ORDER AFFIRMING  
ADMINISTRATIVE DECISION

This matter has been referred and reassigned to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(c). Plaintiff brings the instant action pursuant to 205(g) of the Social Security Act ("the Act"), as amended, 42 U.S.C. § 405(g), to obtain judicial review of the defendant's final decision denying plaintiff's application for disability insurance benefits. Specifically, plaintiff argues (1) the ALJ improperly rejected the opinions of Dr. Meharg, Dr. Lewis, and Dr. Eather, (2) the ALJ erroneously failed to conclude Plaintiff's arthritis (affecting her left knee and shoulder) was a severe impairment, and (3) the ALJ improperly rejected Plaintiff's testimony and the testimony of the lay witness, Ms. Peterson. After reviewing the record, the court finds and orders as follows:

1. This Court must uphold the determination that plaintiff is not disabled if the ALJ applied the proper legal standard and there is substantial evidence in the record as a whole to support the decision. Hoffman v. Heckler, 785 F.2d 1423, 1425 (9th Cir. 1986). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Richardson v. Perales, 402 U.S.

1 389, 401 (1971); Fife v. Heckler, 767 F.2d 1427, 1429 (9th Cir. 1985). It is more than a scintilla but less  
2 than a preponderance. Sorenson v. Weinberger, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975); Carr v.  
3 Sullivan, 772 F. Supp. 522, 525 (E.D. Wash. 1991). If the evidence admits of more than one rational  
4 interpretation, the Court must uphold the Secretary's decision. Allen v. Heckler, 749 F.2d 577, 579 (9th  
5 Cir. 1984).

6 2. The ALJ is entitled to resolve conflicts in the medical evidence. Sprague v. Bowen, 812 F.2d  
7 1226, 1230 (9<sup>th</sup> Cir. 1987). He may not, however, substitute his own opinion for that of qualified medical  
8 experts. Walden v. Schweiker, 672 F.2d 835, 839 (11<sup>th</sup> Cir. 1982). If a treating doctor's opinion is  
9 contradicted by another doctor, the Commissioner may not reject this opinion without providing "specific  
10 and legitimate reasons" supported by substantial evidence in the record for doing so. Murray v. Heckler,  
11 722 F.2d 499, 502 (9th Cir. 1983). "The opinion of a nonexamining physician cannot by itself constitute  
12 substantial evidence that justifies the rejection of the opinion of either an examining physician or a treating  
13 physician." Lester v. Chater, 81 F.3d 821, 831 (9th Cir. 1996). In Magallanes v. Bowen, 881 F.2d 747,  
14 751-55 (9th Cir. 1989), the Ninth Circuit upheld the ALJ's rejection of a treating physician's opinion  
15 because the ALJ relied not only on a nonexamining physician's testimony, but in addition, the ALJ relied  
16 on laboratory test results, contrary reports from examining physicians and testimony from the claimant that  
17 conflicted with the treating physician's opinion.

18 Here, the ALJ properly evaluated Dr. Meharg's assessment in context of the record as a whole.  
19 The ALJ gave weight to the portions of the opinion that were corroborated by other medical evidence and  
20 statements from the plaintiff. For instance, Dr. Meharg found that Ms. Reynolds had "completely intact  
21 abilities with respect to verbal learning and memory" (Tr. 243). He reported that she had only mild  
22 impairments in basic attention skills and moderate limitations in visual learning and memory (Tr. 18, 243).  
23 Dr. Meharg found that her failure to return to work was self-imposed (Tr. 243).

24 The ALJ also relied, in part, on the opinions of Drs. Lewis and Eather related to Plaintiff's  
25 functional limitations. Drs. Lewis and Eather assessed Plaintiff with moderate limitations in understanding,  
26 remembering and carrying out detailed instructions (Tr. 287). Drs. Lewis and Eather indicated that while  
27 her pace is slow, she had good persistence for routine tasks (Tr. 289). Consistent with  
28 this assessment, the ALJ included in her residual functional capacity ("RFC") the restriction to simple,

1 repetitive work (Tr. 22). The ALJ rejected any more restrictive findings based on the medical evidence  
2 that indicated that she had almost completely recovered from her stroke a year previous. The ALJ  
3 specifically relied on the opinion of Dr. Moon with respect to Ms. Reynolds' cognitive functioning and  
4 abilities.

5 The ALJ was presented with conflicting medical opinions. Much of disagreement arises with  
6 respect to the degree in which Ms. Reynolds has recovered from her stroke. As noted above, it is the  
7 ALJ's responsibility to resolve conflicts in the evidence and to support his decision by substantial evidence.  
8 Here, the ALJ properly weighed the medical evidence and concluded that Ms. Reynolds had made a  
9 significant recovery from her stroke. The ALJ did not err.

10 3. Step-two of the administration's evaluation process requires the ALJ to determine whether an  
11 impairment is severe or not severe. 20 C.F.R. §§ 404.1520, 416.920 (1996). An impairment is "not  
12 severe" if it does not "significantly limit" the ability to do basic work activities. 20 C.F.R. §§ 404.1521(a),  
13 416.921(a). The Social Security Regulations and Rulings, as well as case law applying them, discuss the  
14 step-two severity determination in terms of what is "not severe." According to the Commissioner's  
15 regulations, "an impairment is not severe if it does not significantly limit [the claimant's] physical ability to  
16 do basic work activities," 20 C.F.R. §§ 404.1520(c), 404.1521(a)(1991). Basic work activities are  
17 "abilities and aptitudes necessary to do most jobs, including, for example, walking, standing, sitting, lifting,  
18 pushing, pulling, reaching, carrying or handling." 20 C.F.R. § 140.1521(b); Social Security Ruling 85-  
19 28 ("SSR 85-28"). An impairment or combination of impairments can be found "not severe" **only** if the  
20 evidence establishes a slight abnormality that has "no more than a minimal effect on an individuals ability  
21 to work." *See* SSR 85-28; Yuckert v. Bowen, 841 F.2d 303, 306 (9th Cir.1988)(adopting SSR  
22 85-28)(emphasis added).

23 Here, the ALJ found no severe impairment caused by arthritis (affecting her left knee and shoulder).  
24 The ALJ's decision is properly supported by the record. A medical examination showed no signs of joint  
25 inflammation or swelling (Tr. 263). State Agency physician Robert Hoskins, M.D., assessed no limitations  
26 related to her knee pain, and noted that she had good range of motion in her joints, and good strength and  
27 gait (Tr. 283). When asked if she had any problems with her knee, Ms. Reynolds said she did not have any  
28 problems walking or standing (Tr. 325). Dr. Hoskins further noted that she had good range of motion in

1 her left shoulder and that her condition was well controlled (Tr. 283-84). He assessed that her only  
2 limitation was in reaching overhead with her left arm, but that she was able to do it frequently (Tr. 284).  
3 When questioned about her limitations related to her left shoulder, Plaintiff testified that she could lift 40  
4 pounds occasionally, but could probably lift 15 to 20 pounds more frequently (Tr. 326). Therefore,  
5 substantial evidence supported the ALJ's decision that these impairments  
6 were mild, and not severe impairments.

7 4. The ALJ has a special duty to fully and fairly develop the record and to assure that the  
8 claimant's interests are considered. Brown v. Heckler, 713 F.2d 441, 443 (9th Cir. 1983). Bunnell v.  
9 Sullivan, 947 F.2d 341 (9th Cir. 1991) (*en banc*), is controlling Ninth Circuit authority on evaluating  
10 plaintiff's subjective complaints of pain. Bunnell requires the ALJ findings to be properly supported by the  
11 record, and "must be sufficiently specific to allow a reviewing court to conclude the adjudicator rejected  
12 the claimant's testimony on permissible grounds and did not 'arbitrarily discredit a claimant's testimony  
13 regarding pain.'" Id. at 345-46 (quoting Elam v. Railroad Retirement Bd., 921 F.2d 1210, 1215 (11th Cir.  
14 1991)). Similarly, the ALJ can reject the testimony of lay witnesses only if s/he gives reasons germane to  
15 each witness whose testimony s/he rejects. Smolen v. Chater, 80 F.3d 1273, 1288 (9th Cir. 1996) Dodrill  
16 v. Shalala, 12 F.3d 915, 919 (9th Cir. 1993).

17 The ALJ properly discounted or discredited Ms. Reynolds' claims of total disability. As discussed  
18 above, the ALJ properly found that Plaintiff's claim of disability because of cognitive deficits was  
19 inconsistent with the medical evidence. For example, although Plaintiff reported frequent lapses of  
20 memory, testing by Stephen Meharg, Ph.D., showed that her memory was within normal limits, that she  
21 had intact abilities in verbal learning and memory, and that she had only mild impairments in basic attention  
22 (Tr. 19, 238, 242-43). Treating physician Robert Lonian, M.D., noted on August 28, 2001, that Plaintiff  
23 had recovered satisfactorily, and that she reported doing "great" (Tr. 259). Her treating physician, David  
24 Moon, M.D., reported on September 24, 2001, that she had made about a full recovery from her stroke  
25 (Tr. 17, 257).

26 The ALJ also found that Ms. Reynolds' testimony about the severity of her panic attacks and  
27 memory lapses was exaggerated as compared to the medical evidence, and was inconsistent with her prior  
28 statements (Tr. 18, 22). Plaintiff testified that she was not able to work because of panic attacks that

1 occurred about three times a month (Tr. 22, 319). However, the ALJ cited that she reported to Dr. Meharg  
2 in September 2002, that her panic attacks were only occasional and mild (Tr. 20, 22, 240). Further,  
3 Plaintiff reported to Dr. Meharg, that although she had frequent lapses of memory, they were just an  
4 annoyance and an embarrassment, but had no impact on her social functioning (Tr. 18, 20, 238).

5 The ALJ also properly considered and discounted the statements of Plaintiff's sister. He discussed  
6 the weight given to statements, and he properly rejected those portions that were beyond their observations  
7 of her behavior (Tr. 23). The ALJ found that the statements, like those of Ms. Reynolds, were not fully  
8 consistent with the medical evidence that indicated that her impairments resulted only in mild limitations.  
9 In sum, the ALJ did not err when he evaluated and discredited Ms. Reynolds' subjective complaints and  
10 allegations of total disability and the similar statements made by her sister.

11 5. Accordingly, the Court AFFIRMS the Social Security Administration's final decision.

12 DATED this 31st day of May, 2005.

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14 /s/ J. Kelley Arnold  
15 J. Kelley Arnold  
16 U.S. Magistrate Judge  
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